

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 23-01010-mg

5 - - - - - x

6 In the Matter of:

7

8 CELSIUS NETWORK LLC,

9

10 Debtor.

11 - - - - - x

12 SHANKS,

13 Plaintiff,

14 v.

15 CELSIUS NETWORK LLC, et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 November 30, 2023

23 10:03 AM

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1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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1 HEARING re Hybrid Hearing RE: Second Application of Stout  
2 Risius Ross, LLC as Valuation Advisors for the Debtors, for  
3 Interim Allowance of Compensation for Professional Services  
4 Rendered and Reimbursement of Actual and Necessary Expenses  
5 Incurred from March 1, 2023 Through June 30, 2023 for Stout  
6 Risius Ross, LLC, Other Professional, period: 3/1/2023 to  
7 6/30/2023, fee:\$727,005.00, expenses:\$. (Docket Number:  
8 3305, 3410).

9  
10 HEARING re Hybrid Hearing RE: Third Interim Fee Application  
11 of Centerview Partners LLC, as Investment Banker to the  
12 Debtors for Allowance of Compensation and Reimbursement of  
13 Expenses for the Period March 1, 2023 Through June 30, 2023  
14 for Centerview Partners LLC, Other Professional, period:  
15 3/1/2023 to 6/30/2023, fee:\$1,000,000.00, expenses:  
16 \$1,000.20. (Docket Number: 3303, 3338).

17  
18 HEARING re Hybrid Hearing RE: Third Application of Alvarez &  
19 Marsal North America, LLC as Financial Advisors for the  
20 Debtors, for Interim Allowance of Compensation for  
21 Professional Services Rendered and Reimbursement of Actual  
22 and Necessary Expenses Incurred from March 1, 2023 Through  
23 and Including June 30, 2023 for Alvarez & Marsal North  
24 America, LLC, Other Professional, period: 3/1/2023 to  
25 6/30/2023, fee:\$7,229,896.00, expenses: \$ 12,458.59.

1 (Docket Number: 3302, 3338).

2  
3 HEARING re Hybrid Hearing RE: First Interim Fee Application  
4 of KE Andrews as Property Tax Service Providers for the  
5 Debtors and Debtors in Possession, for Interim Allowance of  
6 Compensation for Professional Services Rendered from March  
7 6, 2023 Through and Including June 30, 2023 for KE Andrews,  
8 Other Professional, period: 3/6/2023 to 6/30/2023,  
9 fee:\$187,500.00, expenses: \$0. (Docket Number: 3301, 3338).

10  
11 HEARING re Hybrid Hearing RE: Third Application for Interim  
12 Professional Compensation for Latham & Watkins LLP, Special  
13 Counsel, period: 3/1/2023 to 5/31/2023, fee:\$207,593.50,  
14 expenses: \$97.61. (Docket Number: 3292, 3338).

15  
16 HEARING re Hybrid Hearing RE: Third Application for Interim  
17 Professional Compensation of Akin Gump Strauss Hauer & Feld  
18 LLP as Special Litigation Counsel to the Debtors and Debtors  
19 in Possession for Allowance of Compensation for Services  
20 Rendered and Reimbursement of Expenses for the Period March  
21 1, 2023 through and Including June 30, 2023 for Akin Gump  
22 Strauss Hauer & Feld LLP, Special Counsel, period: 3/1/2023  
23 to 6/30/2023, fee:\$3,276,242.10, expenses: \$91,832.77.

24 (Docket Number: 3291, 333 8).

1 HEARING re Hybrid Hearing RE: Third Application for Interim  
2 Professional Compensation for Ernst & Young LLP, Other  
3 Professional, period: 3/1/2023 to 6/30/2023, fee:  
4 \$254,941.00, expenses: \$0.00. filed by Joshua Sussberg.  
5 (Docket Number: 3280, 3338).

6  
7 HEARING re Hybrid Hearing RE: Third Application for Interim  
8 Professional Compensation for Gregory F Pesce, Creditor  
9 Comm. Atty, period: 3/1/2023 to 6/30/2023, fee:\$14,428,718.5,  
10 expenses: \$117,845.96. filed by Gregory F Pesce. (Docket  
11 Number: 3296, 3379).

12  
13 HEARING re Hybrid Hearing RE: Second Application for Interim  
14 Professional Compensation of Selendy Gay Elsberg PLLC for  
15 Services Rendered and Reimbursement of Expenses as  
16 Co-Counsel to the Official Committee of Unsecured Creditors  
17 for the Period of March 1, 2023, through June 30, 2023, for  
18 Selendy Gay Elsberg PLLC, fee: \$2,638,540.50, expenses:  
19 \$189,579.89, filed by Selendy Gay Elsberg PLLC.  
20 (Docket Number: 3298, 3358).

21  
22 HEARING re Hybrid Hearing RE: Amended Third Interim Fee  
23 Application of Kirkland & Ellis LLP and Kirkland & Ellis  
24 International LLP, Attorneys for the Debtors and Debtors in  
25 Possession, for the Interim Fee Period from March 1, 2023,

1 Through and Including June 30, 2023 for Kirkland & Ellis LLP  
2 and Kirkland & Ellis International LLP, Debtor's Attorney,  
3 period: 3/1/2023 to 6/30/2023, fee:\$19,139,094.5, expenses:  
4 \$317,264.53. (Docket Number: 3318, 3306)

5  
6 HEARING re Hybrid Hearing RE: Third Interim Fee Application  
7 for Perella Weinberg Partners LP, Other Professional,  
8 period: 3/1/2023 to 6/30/2023, fee:\$400,000, expenses:  
9 \$49,719.49. filed by Perella Weinberg Partners LP. (Docket  
10 Numbers: 3287, 3390)

11  
12 HEARING re Hybrid Hearing RE: First Interim Fee Application  
13 of Lucy L. Thomson, Consumer Privacy Ombudsman, Pursuant to  
14 Bankruptcy Code Section 330 for Allowance of Compensation  
15 and Reimbursement of Expenses for Lucy L. Thomson, Ombudsman  
16 Consumer, period: 10/25/2022 to 6/30/2023, fee:\$127,270.00,  
17 expenses: \$200.00. (Doc## 3470, 1208,3503,3504,3836)

18 Hybrid Hearing RE: Third Application for Interim  
19 Professional Compensation for M3 Advisory Partners, LP,  
20 Other Professional, period: 3/1/2023 to 6/30/2023,  
21 fee:\$4,368,928.00, expenses: \$10,857.40.  
22 (Docket Numbers: 3300, 3379).

23  
24 HEARING re Hybrid Hearing RE: Second Application for Interim  
25 Professional Compensation for Gomitzky & Co., Other

1 Professional, period: 3/1/2023 to 6/30/2023, fee:\$7,309.58,  
2 expenses: \$0.00. (Docket Numbers: 3295, 3379).

3  
4 HEARING re Hybrid Hearing RE: Third Interim Application of  
5 Elementus Inc. for Compensation for Services Rendered and  
6 Reimbursement of Expenses as Blockchain Forensics Advisor to  
7 The Official Committee of Unsecured Creditors of Celsius  
8 Network, LLC, et al., for the Period from March 1, 2023  
9 through June 30, 2023 for Elementus Inc., Other  
10 Professional, period: 3/1/2023 to 6/30/2023, fee:\$343,  
11 785.00, expenses: \$151,326.80.  
12 (Docket Numbers: 3294, 33 79).

13  
14 HEARING re Hybrid Hearing RE: Third Interim Fee Application  
15 of Huron Consulting Services LLC as Financial Advisor to the  
16 Examiner for the Period from March 1, 2023 through and  
17 including March 31, 2023 for Huron Consulting Services LLC,  
18 Other Professional, period: 3/1/2023 to 3/31/2023,  
19 fee:\$52,093.00, expenses: \$607.07.  
20 (Docket Number: 3309, 3342).

21  
22 HEARING re Hybrid Hearing re: Third Application for Interim  
23 Professional Compensation for Fee Examiner Sontchi, Other  
24 Professional, period: 7/1/2023 to 10/31/2023,  
25 fee:\$48,375.00, expenses: \$1,332.35. (Doc# 3978, 3981)

1 HEARING re Hybrid Hearing re: Third Application for Interim  
2 Professional Compensation as Attorneys for the Fee Examiner  
3 for Godfrey & Kahn, S.C., Other Professional, period:  
4 7/1/2023 to 10/31/2023, fee:\$316,906.00, expenses:  
5 \$11,694.83. (Doc# 3979, 3981)

6  
7 HEARING re Hybrid Hearing re: Motion for Entry of an Order  
8 (I) Approving the Settlement By and Between the Debtors and  
9 EZ Blockchain Services, LLC and (II) Granting Related  
10 Relief. (Doc# 3983, 4004, 4028, 4029)

11  
12 HEARING re Adversary proceeding: 23-01010-mg Shanks v.  
13 Celsius Network LLC et al  
14 Hybrid Hearing RE: Motion to Dismiss (Dkt. Nos. 9, 10, 18)

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25 Transcribed by: Sonya Ledanski Hyde



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14 ALI JAMSHID FAR  
15 JANK JANKOVIC  
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13 BEN CLARKE  
14 MIA COOPER  
15 DREW DUFFY  
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17 RAMON GONZALES  
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3 ZACHARY ZABIB

4 DREW DUFFY

5 UDAY GORREPATI

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1 P R O C E E D I N G S

2 CLERK: All rise.

3 AUTOMATED VOICE: Recording in progress.

4 THE COURT: Please be seated. Good morning,  
5 everyone. All right. We have a long agenda.

6 MR. KOENIG: We do, Your Honor. Good morning. We  
7 hope you had a wonderful Thanksgiving.

8 THE COURT: I did. And you?

9 MR. KOENIG: Thank you. Thank you. We are joined  
10 in the courtroom by Mr. David Boesch, who is one of the  
11 members of our special committee, so I'd be remiss if I  
12 didn't introduce him.

13 THE COURT: Welcome.

14 MR. KOENIG: We do have a long agenda, but I think  
15 it will actually be pretty brief, despite the number of  
16 matters. Most of them are uncontested fee applications that  
17 will be spoken to.

18 Before beginning with our brief agenda, I wanted  
19 to provide Your Honor and the parties a brief update on two  
20 important issues. First, the simpler one, perhaps.

21 So, custody withdrawals under the plan opened  
22 yesterday. Pleased to report that they are off to a great  
23 start. Almost 45 percent of the amount eligible to be  
24 withdrawn off the system. Transactions were begun  
25 yesterday. We were able to process over \$10 million of the

1 hundred million dollars available for distribution.

2 Five thousand creditors yesterday how login and  
3 tried to withdraw. We processed 3,000 creditor withdrawals.  
4 There's still 2,000 that are in the queue. Just for folks  
5 on the line, we know that there are plenty of folks in the  
6 queue. We know that there are folks with tickets. We are  
7 working through them as expeditiously as possible.

8 We processed an awful lot of withdrawals in the  
9 last 10 hours, frankly. And there's log-in issues and we're  
10 aware that all of that is happening. So please, you know,  
11 obviously, continue to send in the tickets. But rest  
12 assured that we're working through the process. The process  
13 is working. It's just there's an awful lot of people trying  
14 to withdraw money, which we certainly understand.

15 MR. KOENIG: Second, we and the Committee filed a  
16 joint motion last night. I don't know if Your Honor has had  
17 a chance to --

18 THE COURT: I heard it was filed overnight.

19 MR. KOENIG: So, we filed a joint motion last  
20 night to implement a toggle option under the plan's pivot to  
21 a mining only transaction. That motion won't be heard until  
22 our next omnibus hearing on December 21st, but I wanted to  
23 just give a little bit of context for that motion.

24 So, as we explained during closing arguments at  
25 confirmation, one of the conditions precedent to the NewCo

1 claim of Fahrenheit was the approval of a pre-clearance  
2 letter with the SEC for the NewCo financials that would've  
3 been filed. And we disclosed in a press release on November  
4 20th that the SEC indicated to us a few weeks ago that the  
5 SEC would not be approving the preclearance letter.

6 But the SEC did give us guidance that we would not  
7 need to submit another preclearance letter to pursue SEC  
8 registration of a mining only business. And of course, our  
9 confirmed Chapter 11 plan contemplated this exact scenario,  
10 in large part because of this regulatory uncertainty around  
11 crypto currency companies.

12 More specifically, the plan included two options  
13 to exit Chapter 11. The main option of Fahrenheit NewCo, or  
14 a standalone mining only transaction, which is referred to  
15 in the plan as an orderly winddown.

16 So, after the SEC provided us with this guidance,  
17 the Debtors and the Committee promptly met with all the  
18 bidders that have been active in our marketing process to  
19 provide mining management are to take a break services, so  
20 that we could promptly determine which mining manager we  
21 would move forward with. And we need to do that for two  
22 reasons.

23 First, US Bitcoin was the mining manager under the  
24 Fahrenheit deal. And US Bitcoin has already done  
25 significant work to help the company optimize our mining

1 assets, including preparing a comprehensive business plan of  
2 how they were going to run those assets under the Fahrenheit  
3 deal. And US Bitcoin is also already helping us build on  
4 our Cedarville facility that we obtained through the  
5 settlement for Core Scientific. So, of course, we wanted to  
6 hear whether US Bitcoin was interested in being a mining  
7 manager, now that the broader Fahrenheit transaction was no  
8 longer feasible.

9 And while the Fahrenheit deal was obsolete, the  
10 existing backup deal that we also had with the BRIC was also  
11 obsolete. That deal contemplated a robust suite of services  
12 to be provided and corresponding management fees for those  
13 services. Those services included resolving claims  
14 bringing, bringing estate litigation, and making  
15 distributions through their own distribution partner.

16 So that deal was also stale because of all the  
17 progress that we've made since that deal was struck in May.  
18 All that progress obviated the need for most of those  
19 services. Specifically, we've resolved nearly all of the  
20 account holder claims through the class claims settlement.

21 We have a litigation administrator who will be  
22 bringing these estate claims and reporting to a litigation  
23 oversight board. And we have our own crypto distribution  
24 partners in PayPal and Coinbase. And all of this was built  
25 into the plan and approved as part of the confirmation

1 order.

2 So, for these reasons, we needed to promptly work  
3 with our existing bidders to determine the best money  
4 management deal and move forward. The most important thing  
5 from our perspective is to get out of bankruptcy promptly  
6 with an executable deal that maximizes value.

7 We ran a month-long auction process already. We  
8 have no intention of doing that again. We need to get out  
9 of bankruptcy and cut off the administrative burn that comes  
10 with running a large Chapter 11 case like this one.

11 So we went back to the existing bidders to  
12 determine the best deal available to move forward on this  
13 MiningCo transaction. Following these negotiations, the  
14 Debtors and the Committee jointly selected US Bitcoin as the  
15 mining manager for this MiningCo. This should come as no  
16 surprise.

17 Fahrenheit won the auction in large part because  
18 the Debtors and the Committee determined that US Bitcoin was  
19 the best mining manager available and that they presented us  
20 with terms for a mining company that would best maximize the  
21 value of that new business. And now that the new company  
22 will be only mining, the identity of the mining manager is  
23 that much more important.

24 We are confident that US Bitcoin will be able to  
25 lead out this MiningCo and maximize value for Celsius

1 creditors, who will be the MiningCo's shareholders. And we  
2 also believe that this is the cleanest and fastest path to  
3 exiting bankruptcy. The definitive documents with US  
4 Bitcoin were already fully negotiated as part of the  
5 Fahrenheit transaction, which took quite a long time to  
6 negotiate. But the adjustments to those documents to  
7 account for this narrower transaction should not take a long  
8 time, now that we've agreed to the term sheet that we  
9 attached to the motion.

10 So, to be candid, this was obviously not the  
11 feedback we were hoping for from the SEC. But we've quickly  
12 pivoted to an option that was already built into the plan  
13 that will maximize the value of the mining business and  
14 allow us to promptly exit from bankruptcy within the  
15 confines of our already confirmed plan.

16 We were able to, over the last couple of weeks,  
17 negotiate lower management fees with US Bitcoin and we  
18 improved the terms of the deal in several ways that will  
19 benefit creditors. This will allow \$225 million in more  
20 liquid crypto to be distributed to creditors, compared to  
21 the earlier Fahrenheit deal.

22 The motion will be heard in December. And while  
23 there's still work to do before we could emerge, we think  
24 that if the motion is approved, we could still exit  
25 bankruptcy in January. That emergence from bankruptcy would



1 not require additional approvals from the SEC. But just to  
2 be clear, before the stock can be traded, the SEC would  
3 post-bankruptcy have to approve the Form 10. It's not a  
4 crypto-specific approval. It's a requirement for any new  
5 company that registers stock to comply with state blue sky  
6 laws and other securities regulations.

7 We're pleased with the constructive dialogue we've  
8 had with the SEC so far and we're grateful for their  
9 guidance that we can submit the Form 10 without any further  
10 preclearance.

11 One last item in particular we wanted to flag for  
12 Your Honor. You may recall that the plan had an election  
13 for account holders who could select more neutral equity at  
14 a premium or more liquid crypto at a discount. The plan  
15 provided that those elections would not be in place for a  
16 backup transaction, and that was in part because the backup  
17 transaction might be different. How could somebody elect  
18 for something, the exact terms of which had not yet been  
19 decided.

20 But based on the initial feedback that we've  
21 received from creditors, folks want to be able to make that  
22 election in the case of this MiningCo transaction. We  
23 haven't finalized our plans there, but we're strongly  
24 considering whether and how to send new notices out to  
25 people that would allow them to make that election for this

1 transaction as well. We'd have to void out the old  
2 elections; that was for a different transaction structure.  
3 We just wanted to flag that for Your Honor so you're not  
4 surprised if we show up on December 21st and we have sent  
5 out notices requesting that people make that election again.

6 THE COURT: What's the authority for doing that?

7 MR. KOENIG: I would say we can get it -- I can  
8 make an oral motion right now --

9 THE COURT: No. I'm not --

10 MR. KOENIG: -- if Your Honor would like it, or we  
11 would have it approved retroactively in the order.

12 THE COURT: I read that the notice that the notice  
13 that was filed, about what happened with the SEC. And I  
14 understood that the transaction structure was changing.  
15 Other than those top headlines, I don't know anything  
16 further.

17 MR. KOENIG: Understood.

18 THE COURT: So, don't take any of my comments  
19 today as an indication one way or the other, whether what is  
20 being proposed can be accomplished without re-solicitation,  
21 re-vote, all of that. I'm not saying it has to be. I'm  
22 just saying I won't be surprised if what you're proposing is  
23 that with substantial objections, because there were  
24 substantial objections before. No reason to think that  
25 won't happen again.

1 MR. KOENIG: Sure.

2 THE COURT: Take them up on the merits, if and  
3 when this comes on before me. But you raced through a lot  
4 in the statement you made. And it will raise real questions  
5 whether the transactions -- the exit plan that is now being  
6 put forward is what was described in a disclosure statement,  
7 what is the basis of what people voted on.

8 Just the last point you made about whether or not  
9 people given an option -- given a new option to elect as to  
10 what percentage of -- what percentage of shares of the new  
11 mining company they'll take, et cetera.

12 Let me ask this question. Have you conferred yet  
13 with the U.S. Trustee -- see two people form the U.S.  
14 Trustee sitting in the back -- about the new proposed  
15 structure?

16 MR. KOENIG: We spoke to the U.S. Trustee -- I  
17 forget whether it was a week or two weeks ago -- and let  
18 them know that we were going to be exercising the option, as  
19 is --

20 THE COURT: Well, this is not the option that was  
21 in the plan.

22 MR. KOENIG: Well, Your Honor --

23 THE COURT: This is different.

24 MR. KOENIG: The option --

25 THE COURT: Are you telling me this is the option

1 that was in the plan?

2 MR. KOENIG: Your Honor, the plan provided for  
3 either the backup option or that was disclosed or --

4 THE COURT: It wasn't this deal, though.

5 MR. KOENIG: It wasn't this deal. But the plan  
6 did provide that it could be this deal --

7 THE COURT: It wasn't this deal.

8 MR. KOENIG: -- or different deal with another  
9 mining manager on terms that were at least as good for  
10 creditors.

11 THE COURT: Is that in there? Is that in the  
12 plan?

13 MR. KOENIG: Those exact words are in the plan,  
14 Your Honor.

15 THE COURT: Okay.

16 MR. KOENIG: And in the disclosure statement.

17 THE COURT: I'm not -- you know, I'm pushing back  
18 now because I'm trying -- I haven't read -- I've heard from  
19 my clerks that it was filed overnight. I haven't read it.  
20 I saw the press release that -- you know, after the SEC said  
21 what it said. Why that couldn't have been further  
22 ascertained before the plan was confirmed, I don't know.  
23 The one thing I was like a broken record about, the  
24 importance of conferring with State and Federal regulators  
25 throughout, so we didn't get to a point of some bad

1 surprises, which I put this in the category of.

2 MR. KOENIG: And we agree with that, Your Honor.

3 THE COURT: Exactly what I wanted to avoid has  
4 happened. And now, the question is what gets done about it?  
5 And it may be that exactly -- this may be a perfectly good  
6 plan structure that's contemplated now, but the question is,  
7 is it the one that was disclosed and people voted on? Okay.  
8 I don't know. I haven't read any of this yet.

9 MR. KOENIG: Understood, Your Honor.

10 THE COURT: Don't assume that you're getting g a  
11 gimme on this. It isn't happening. Okay?

12 MR. KOENIG: Understood. What I'll --

13 THE COURT: The last thing I want is to have to do  
14 a do over, have (indiscernible) new plan, disclosure  
15 statement, voting, et cetera. That's not what I want. But  
16 that may be what happens. I can't -- you know...

17 MR. KOENIG: Understood, Your Honor. I'll just  
18 repeat that in the plan and disclosure statement we included  
19 that it could be the deal or it could be a deal that is on  
20 better terms. And I mean, frankly, it is -- you know, the  
21 distribution partners that we selected for the Fahrenheit  
22 plan is just sort of pouring over to the back-up. And you  
23 know, the US Bitcoin was already the mining manager for the  
24 NewCo.

25 THE COURT: Mr. Koenig, it sounds nice.

1 MR. KOENIG: I understand.

2 THE COURT: We'll see. But that's -- you know,  
3 just because it sounds nice doesn't mean that it can be done  
4 easily. Okay? We'll see.

5 MR. KOENIG: Understood. We've been focused on it  
6 and, of course, will carry our burdens that convince you of  
7 that in December.

8 Do you have anything else for me, Your Honor? I  
9 don't know if the Committee had preliminary comments, or if  
10 you'd like to get on with the agenda?

11 THE COURT: Somebody else want to be heard on  
12 this?

13 MR. FINESTONE: I'd like to be heard.

14 THE COURT: Please come up to the microphone.

15 MR. FINESTONE: Thank you, Your Honor. Ben  
16 Finestone, from Quinn Emanuel, on behalf of the Blockchain  
17 Recovery Investment Consortium, referred to in these cases,  
18 Your Honor, as the BRIC, and defined in the plan as the B-R-  
19 I-C.

20 Your Honor, we are the title option that was  
21 provided for in the plan. There is really no -- in my  
22 experience, there is really no room in bankruptcy for I told  
23 you so, or self-credit --

24 THE COURT: We don't have to get into that.

25 MR. FINESTONE: Yeah, I --

1 THE COURT: Today is not the point to --

2 MR. FINESTONE: It's not the point, Your Honor,  
3 and that's why I'm not going to do that. But we do want --  
4 what we do want, Your Honor, here -- and similarly, we  
5 understand it's on a non-evidentiary basis.

6 But in terms of Your Honor hearing the other side  
7 of the story, when we heard the news about the SEC's  
8 position, we expected the Debtor to realize upon the value  
9 that it paid us by keeping us locked and loaded as a backup  
10 plan, at the factory, toggle to us, engage with us, and move  
11 forward. That would have caused the least delay and that  
12 would have triggered the least incremental administrative  
13 expenses, which is good for the estate, and of course  
14 derivatively good for all of the account holders. It hasn't  
15 happened, Your Honor. And I just want to give to preview  
16 comments in terms of price and process.

17 In terms of price, the Debtors told us what they  
18 told Your Honor, that our deal was stale. We're not sure we  
19 agreed with that, but we didn't have the time or the luxury,  
20 Your Honor, of sitting around and fighting with them about  
21 whether our deal was stale. So we moved our deal. We've  
22 modified our deal .

23 We've looked at the papers they filed last night,  
24 because I don't have the docket that Your Honor has, so I  
25 was able to get up early and read these papers. That's why

1 I'm saying I've had the opportunity to look at them, Your  
2 Honor, and I can just say on behalf of the BRIC there are  
3 three buckets. Debtors' counsel only spoke about one  
4 bucket.

5 But of course, the way math works, you have to  
6 speak about three buckets. Plan administration and  
7 employment fees. We're \$23 million cheaper to the estate.  
8 Litigation trust --

9 THE COURT: This is really not the time to get  
10 into this.

11 MR. FINESTONE: Okay. Can I just give --

12 THE COURT: It's just not.

13 MR. FINESTONE: I understand, Your Honor.

14 THE COURT: You'll have plenty of opportunity.  
15 You can file what you want and --

16 MR. FINESTONE: Okay. Let me just --

17 THE COURT: We have to have an evidentiary  
18 hearing, will have an evidentiary hearing.

19 MR. FINESTONE: Appreciate the Court's patience.  
20 I want all the creditors to know, and all the account  
21 holders to know that the deal -- the toggle deal that was  
22 described in the disclosure statement --

23 MR. FINESTONE: Mr. Finestone, stop.

24 MR. FINESTONE: Thank you, Your Honor. Thank you.

25 THE COURT: Mr. Bruh or Ms. Cornell, do you want



1 to be heard at all? You're walking much better, Ms.  
2 Cornell.

3 MS. CORNELL: Good morning, again, Your Honor.  
4 It's Shara Cornell, of the office of the United States  
5 Trustee. The United States Trustee received the papers at  
6 the same time as Your Honor. We have only had a preliminary  
7 chance to review, but obviously, as Your Honor expressed, we  
8 may have our own concerns and look forward to reviewing them  
9 more thoroughly in the future. If you have any questions  
10 for me right now, I don't have any. Thank you.

11 THE COURT: Thank you. Mr. Koenig?

12 MR. KOENIG: Thank you, Your Honor. Again, for  
13 the record, Chris Koenig. So, first up on our agenda is an  
14 uncontested settlement motion with EZ Blockchain. We filed  
15 a motion at Docket Number 3983. We filed a revised proposed  
16 order at Docket Number 4028. In support of the motion, we  
17 filed the declaration of Mr. Ferraro at Docket Number 4029.  
18 Mr. Ferraro is here on Zoom and available for questions.  
19 And at this time, I would move his declaration into  
20 evidence.

21 THE COURT: Any objections? All right. Ferraro  
22 declaration is admitted into evidence.

23 (Declaration of Christopher Ferraro Admitted into  
24 Evidence)

25 MR. KOENIG: Thank you, Your Honor. The Debtors

1 consulted with the Committee prior to entering into the  
2 settle- --

3 THE COURT: That was just before -- that  
4 declaration is ECF 4029?

5 MR. KOENIG: Correct.

6 THE COURT: Great.

7 MR. KOENIG: Yes. The Debtors consulted with the  
8 Committee prior to entering into the settlement. We  
9 received no objections prior to the objection deadline,  
10 which was last week, November 23, 2023.

11 Just very briefly, the settlement agreement  
12 resolves disputes arising from prepetition hosting services  
13 agreements entered into between Celsius Mining and EZ  
14 Blockchain back in 2022. EZ Blockchain was to provide  
15 hosting capacity to Celsius Mining. Due to high energy  
16 prices, Celsius asked EZ Blockchain to shut off all of our  
17 rigs around the time of the bankruptcy filing.

18 From the outset of these cases, we've sought to  
19 resolve contractual disputes against each other arising from  
20 these agreements, including our demand that they return a \$5  
21 million deposit that we made and claims that we had against  
22 each other.

23 So, under the settlement, they're going to return  
24 the deposit to us over time. We're going to enter into a  
25 new hosting agreement and we're going to release claims

1 against each other. We think that this is an appropriate  
2 settlement under the Iridium factors, and we respectfully  
3 request that the Court enter the order.

4 THE COURT: Does anybody else wish to be heard  
5 with respect to the Blockchain -- EZ Blockchain settlement?  
6 All right, it's approved.

7 MR. KOENIG: Thank you, Your Honor. The next  
8 matters are the fee applications. I'll turn the lectern  
9 over to Ms. Stadler and Judge Sontchi. Mr. Sontchi.

10 MS. STADLER: I make that mistake all the time.  
11 Good morning, Your Honor. Katherine Stadler, of Godfrey &  
12 Kahn, appearing for the fee examiner, Chris Sontchi, who is  
13 also in the courtroom today.

14 We are here on Agenda Items 2 through 19, 3 and 4  
15 being our own third interim fee applications, and the  
16 remainder being second and third interim the applications of  
17 retained professionals. The fee examiner's summary report  
18 appears at Docket 4013 and summarizes the applications  
19 recommended for Court approval today.

20 As is expected as the case progresses, fee issues  
21 of concern have become less prevalent as the professionals  
22 acclimate to and adapt their practices to the examiner's  
23 standards and guidelines. We're happy to answer any  
24 questions Your Honor may have about any of the fee  
25 applications or the fee examiner process more generally.

1 THE COURT: Let me first ask, does the U.S.  
2 Trustee want to be heard on this? No?

3 MS. CORNELL: Not at this time. Thank you.

4 THE COURT: Okay. So you don't have any  
5 objections to the fees that are being sought as modified by  
6 agreement with the fee examiner?

7 MS. CORNELL: No, Your Honor.

8 THE COURT: Okay. All right. For the record,  
9 that was Ms. Cornell speaking from the back of the  
10 courtroom. Okay.

11 So, let me just briefly review for the record,  
12 bottom line is I'm going to approve all of the fees as set  
13 forth, as adjusted by agreement, with all parties. Just so  
14 we have a complete record, I'll just try to briefly sort of  
15 describe from the Court's standpoint what has been happening  
16 and what's happened with this fee application.

17 So, the Court appointed that the examiner on  
18 October 20, 2022, and with each of the fee -- every time we  
19 got a fee hearing, the examiner, with his counsel, has  
20 presented the Court held report that has set forth -- has  
21 gone through each of the applications, reflects the  
22 discussions and agreed revisions. In the event there was a  
23 dispute, obviously, it could be brought back here along the  
24 way.

25 And so, with respect to the hearing today, the fee

1 examiner submitted its report, which is ECF Docket Number  
2 4013, filed on November 20, 2023. And it's very  
3 comprehensive. It explains in detail each -- it doesn't go  
4 through the negotiations with each of the changes, but it  
5 reflects the changes that were made. And the examiner  
6 states that the applications now are uncontested.

7 They've reached agreement with the fee examiner,  
8 subject to the Court's approval to resolve with respect to  
9 the applications for fees and expenses primarily incurred  
10 during the third interim fee period. And the interim fees  
11 and expenses are presented in Exhibit A to the report. And  
12 the fee examiner states that the negotiated adjustments,  
13 "satisfy the fee examiner that that fees and expenses of Mr.  
14 (indiscernible) are both reasonable and necessary."

15 So, Godfrey & Kahn, the counsel to the fee  
16 examiner, reviewed the applications, using the process  
17 outlined in detail in the first fee examiner's summary  
18 report; went back to the applicants, many of the applicants,  
19 and through discussions resolved issues that had arisen.  
20 And all of the fee requests that are before me today are  
21 consensual.

22 In the discussions with the applicants, the fee  
23 examiner's counsel summarized each professional's response,  
24 conducted additional analysis where necessary, and presented  
25 all retained professional responses to the fee examiner, Mr.

1 Sontchi, with explanations, summaries and recommendations  
2 for each uncontested applicant.

3 The fee examiner, Mr. Sontchi, reviewed and  
4 retained the retained professional's responses and counsel's  
5 recommendations, conducted additional investigation where  
6 necessary, and ultimately approved each of the resolutions  
7 outlined in what is Exhibit A to the report. And as part of  
8 his review, the VA examiner continued to identify and  
9 quantify the issues outlined during the prior interim fee  
10 period, including non-compensable time, detailed review,  
11 possible duplication of efforts, multiple attendance at  
12 hearings and meetings, and fee guideline noncompliance.

13 So it's been a very comprehensive process, which  
14 certainly has been of enormous assistance to the Court and  
15 hopefully to the U.S. Trustee as well.

16 The Exhibit A to the report shows for each of the  
17 applicants the interim fees requested, the fee examiner's  
18 recommended fee adjustment, the interim expenses requested,  
19 the fee examiner's recommended expense adjustment, the  
20 interim fees recommended for approval and the interim  
21 expenses recommended for approval. So it's all quite  
22 clearly set out for everyone to see. It's on the public  
23 record.

24 So all constituents in the case are able to see  
25 precisely what was sought by the professionals, the

1 compensation period, fees, expenses, the adjustments that  
2 were recommended and that the Court is being asked to  
3 approve today.

4 Obviously, this has been a very expensive case.  
5 There are a lot of professional applications that are -- so  
6 there are 18, I think, that are before the Court today. And  
7 really, the bottom line, having reviewed the fee examiner's  
8 report, obviously being familiar with what the process has  
9 been after the first fee period and this fee period, I  
10 believe that -- well, I am approving all of the fees and  
11 expenses as set forth in the adjusted amounts in the table.  
12 I think it reflects very careful work by the fee examiner  
13 and his counsel, which in my view have done a really  
14 excellent job throughout the case.

15 So I'm pleased to be able to approve. You know, I  
16 always -- one of the points I always try to make is -- and  
17 whether it's the U.S. Trustee that's done the detailed  
18 review or in this case, the fee examiner -- when I and my  
19 clerks and interns review fee applications, we may see  
20 issues that raise questions in our mind.

21 And what I never want to be doing, where there has  
22 been an agreed adjustment, or there is some adjustment  
23 initially with the U.S. Trustee, or in this case with the  
24 fee examiner, I'm always very cautious about sort of  
25 nitpicking about, well, you know, this item seems

1       questionable to me. What I look at more is the big picture.  
2       In my satisfied that the adjustments that have been agreed  
3       upon would resolve -- you know, significantly resolve all of  
4       the issues that I might have. And given the volume of the  
5       fee applications here, it just -- it's very difficult for  
6       the Court to go through each of these and make its own  
7       judgments about it.

8               So I'm very appreciative of the efforts of Mr.  
9       Sontchi and his counsel in the case. And so I'm quite  
10      pleased to be able to approve the fee applications in the  
11      amounts -- approving the amounts set forth in Exhibit A, as  
12      the adjusted amounts.

13             Just give me another moment here.

14             So, I think the last thing other than approving  
15      that is to go through your request for fees and Mr.  
16      Sontchi's request for fees. Let's deal with all of them  
17      right now. Do you want to just address that briefly?

18             MS. STADLER: Certainly. As the professionals'  
19      applications have become somewhat more straightforward, so  
20      have ours. Both Mr. Sontchi's and our firm's fees have gone  
21      down relative to the prior interim fee periods.

22             With respect to Mr. Sontchi's application, we took  
23      Your Honor's suggestion from the last fee hearing and broke  
24      his time down into sub-matter categories.

25             THE COURT: Seven categories you've broken it down



1 into?

2 MS. STADLER: Correct. So, hopefully, that  
3 satisfies the Court's concern about the timekeeping  
4 practices there. Otherwise, I think the applications are  
5 straightforward.

6 THE COURT: So is it -- for Mr. Sontchi, the  
7 request is for \$48,375 in compensation and \$1,332.35 in  
8 expense reimbursement. Is that correct? Sometimes I get  
9 this wrong, so...

10 MS. STADLER: What?

11 THE COURT: Sometimes I get this wrong.

12 MS. STADLER: Oh. Yeah, me too.

13 THE COURT: I just want to be sure, okay?

14 MS. STADLER: \$48,375 --

15 THE COURT: Seventy-five dollars, right. And  
16 \$1,332.35 in expenses?

17 MS. STADLER: Correct.

18 THE COURT: Okay. So it reflected 38.1 hours of  
19 time for the fee examiner. And I guess it's still subject  
20 to the 20 percent holdback. Am I correct about that?

21 MS. STADLER: It has been subject to --

22 THE COURT: Subject.

23 MS. STADLER: -- the 20 percent holdback. Upon  
24 approval of the interims, the holdback is to be released  
25 pursuant to the order.

1 THE COURT: I just note that the fees incurred in  
2 October included \$50 that were actually incurred in  
3 September that you inadvertently omitted from the September  
4 statement were added in. And it's completely appropriate.

5 The fee examiner's application provides that  
6 during the compensation period, the fee examiner performed  
7 the following duties with the assistance of his counsel.  
8 Completed the review and reporting process of professional  
9 the applications filed by retained professionals for the  
10 period November 1, 2022 through February 28, 2023, and made  
11 substantial progress on reporting on professional fee  
12 applications for the period of March 1, 2023 through June  
13 30, 2023. I don't think I really need to go through it  
14 further than that. I've reviewed it carefully. The math is  
15 all correct. And so the examiner -- Mr. Sontchi's fees and  
16 expenses are approved.

17 With respect to your firm, Godfrey & Kahn, seeks  
18 an allowance of \$316,906 in compensation, and \$11,694.83 in  
19 expense reimbursement. Is that correct?

20 MS. STADLER: That's correct.

21 THE COURT: Okay. And that reflects a blended  
22 hourly rate for all attorneys of \$578.28 and for all  
23 timekeepers, \$587.56. You know, the application properly  
24 lists the professionals, the breakdown of compensation by  
25 project category, expense summary, detailed time records,

1 detailed expense records, customary comparable hourly rate  
2 disclosures, budget and staffing plan, all of the things I  
3 would expect to see are shown here.

4 So, having reviewed it all, both fees and expenses  
5 are approved.

6 MS. STADLER: Thank you, Judge.

7 THE COURT: Okay. Let me -- one thing before we  
8 move on. There is one fee application that is not covered  
9 in your analysis report. I'm not sure if it was supposed to  
10 be or not. It's the Consumer Privacy Ombudsman.

11 MS. STADLER: Yes.

12 THE COURT: I don't know whether you've had an  
13 opportunity to look at that --

14 MS. STADLER: We --

15 THE COURT: -- and I think -- I see Lucy Thomson  
16 is on the screen. I certainly -- it wasn't covered in your  
17 report. My chambers and my myself have gone through it. I  
18 don't know whether you have any comments about that.

19 MS. STADLER: The only comment I have is that we  
20 are aware of it. We consulted with the Debtors and  
21 Creditors' Committee about whether that application was  
22 included in the fee examiner charge.

23 THE COURT: It wasn't clear to me.

24 MS. STADLER: Given her unique retention, the  
25 conclusion was that it is not.

1 THE COURT: Okay. That was --

2 MS. STADLER: So we did not review it.

3 THE COURT: It was something that wasn't clear. I  
4 wanted to raise it today.

5 MS. STADLER: Yes. Correct.

6 THE COURT: And to see whether you have any  
7 comments about it or not.

8 MS. STADLER: We have not reviewed --

9 THE COURT: Not -- wouldn't expect --

10 MS. STADLER: -- it substantively.

11 THE COURT: Okay. All right. Thank you very  
12 much. Thank you, Mr. Sontchi.

13 MS. STADLER: Judge, the orders have both been  
14 submitted this morning by email to the chamber's email  
15 address. And I would ask that Judge Sontchi and I be  
16 excused from the remainder of the hearing.

17 THE COURT: You're excused.

18 MS. STADLER: Thank you.

19 THE COURT: Absolutely. All right. Ms. Thomson,  
20 do you want to go ahead and I'll deal with your fee  
21 application. It's uncontested. The first interim fee  
22 applications, it's ECF 3470. Ms. Thomson was appointed as  
23 the Consumer Privacy Ombudsman. And it seeks compensation  
24 in the amount of \$127,270 and expenses of \$200. Is there  
25 anything you want to add, Ms. Thomson?

1 MS. THOMSON: Oh, Lucy Thomson, Consumer Privacy  
2 Ombudsman. Thank you, Your Honor. I consulted with the fee  
3 examiner's office and they told me I should submit my fee  
4 application to the U.S. Trustee for review, which I did.

5 THE COURT: Okay. Ms. Cornell or Mr. Bruh, have  
6 you any comment -- anything you want to add about Ms.  
7 Thomson's application?

8 MS. CORNELL: Shara Cornell, on behalf of the U.S.  
9 Trustee. I don't have anything to add at this point, Your  
10 Honor.

11 THE COURT: You have no objections?

12 MS. CORNELL: No objections (indiscernible).

13 THE COURT: All right. So, the Court -- I take --  
14 you know, I took your charge as Consumer Privacy Ombudsman  
15 very seriously. And I believe that issues that you had  
16 raised got resolved prior to the confirmation of the plan.  
17 I viewed it as very important that that be done. And I  
18 appreciate all of the work that you've done. And your  
19 application is approved.

20 MS. THOMSON: Thank you, Your Honor.

21 THE COURT: Okay. All right. Mr. Koenig?

22 MR. KOENIG: Your Honor, the only matter that  
23 remains is there is a motion to dismiss in one of the  
24 adversary proceedings, which my partner, Ms. Brier, will be  
25 arguing.

1 THE COURT: Okay.

2 MS. BRIER: Good morning, Your Honor. Grace  
3 Brier, Kirkland & Ellis, on behalf of the Debtors. Your  
4 Honor, And Mr. Shanks filed an adversary complaint in this  
5 matter back in February. We moved to dismiss. And that's  
6 at Docket Number 9. Mr. Shanks has not responded to our  
7 motion to dismiss, so we --

8 THE COURT: Let me be clear. Mr. Shanks'  
9 adversary proceeding is Case Number 22-10964.

10 MS. BRIER: Thank you, Your Honor.

11 THE COURT: And within that docket, your motion to  
12 -- the motion to dismiss is amended complaint. Your motion  
13 is filed as ECF Docket Number 9, and no response to the  
14 motion was ever (indiscernible). Mr. Shanks is pro se. Go  
15 ahead.

16 MS. BRIER: Thank you, Your Honor. And thank you  
17 for clarifying that. So, as Your Honor noted, Mr. Shanks  
18 has not responded to our motion, so we've largely addressed  
19 arguments that we made in our motion. I'd just like to  
20 highlight a couple of things for the Court today, based on  
21 some recent developments

22 So, first, as we stated in our motion to dismiss,  
23 Mr. Shanks had an Earn account and a custody account as of  
24 the petition date. As we stated in our motion, in the Earn  
25 order, Your Honor contemplated a process for Earn account

1 first to waive claims in the claims resolution process. So,  
2 for that reason, we'd move to dismiss Mr. Shanks' complaint.

3 We'd also note, Your Honor, that he raised a few  
4 declaratory judgment claims. Some of those declaratory  
5 judgment claims rely on language in the loan terms of use  
6 and since --

7 THE COURT: But he -- his amended complaint  
8 alleges 11 separate causes of action.

9 MS. BRIER: Yes, Your Honor. His amended  
10 complaint alleges 11 separate causes of action, that  
11 (indiscernible) breach of contract, declaratory judgment and  
12 fraud claims. We moved to dismiss for the procedural  
13 reasons under the Earn order, and the substantive reasons  
14 are laid out in our motion.

15 This -- the procedural reasons, one of them is the  
16 Earn order, which I just discussed. Another under two of  
17 his declaratory judgment claims rely on lending terms of use  
18 arguments. Since we've moved to discuss, Your Honor has  
19 ruled in the confirmation order that those terms  
20 unambiguously state that the terms transmit ownership title  
21 of collateral to the Debtors. So a number of his claims  
22 have been dispositively resolved by Your Honor's  
23 confirmation order.

24 And then, Your Honor, since filing the motion to  
25 dismiss (indiscernible). Mr. Shanks did not vote in the

1 plan confirmation process. By virtue of abstaining from  
2 voting he's deemed to have not opted out of the class claim  
3 settlement and the third-party release. That is he's deemed  
4 bound by those agreements.

5 Under the third-party release, he has released  
6 Debtors from any claims related to the Chapter 11 cases  
7 (indiscernible) to remedies against the Debtors. And that  
8 at least includes the (indiscernible) for declaratory  
9 judgment, breach of contract, unjust enrichment, and  
10 turnover of collateral. So he's opted into the release by  
11 virtue of abstaining from voting.

12 THE COURT: Just say that again? I missed -- I'm  
13 having a little trouble hearing you over the Zoom. Just say  
14 it again.

15 MS. BRIER: Of course. The release -- the third-  
16 party release that he is deemed to have accepted means that  
17 his claims for declaratory judgment, breach of contract,  
18 unjust enrichment, and turnover of collateral, they're  
19 included in the release. So he's opted into the release by  
20 virtue of abstaining from voting.

21 And then the (indiscernible) claim settlement  
22 waives Mr. Shanks' rights to assert his fraud and willful  
23 misconduct claims. So we submit that since the motion to  
24 dismiss, the voting has also impacted our motion, and we  
25 move to dismiss his claims for that reason as well.



1 THE COURT: (indiscernible)

2 MS. BRIER: Your Honor, if -- go ahead.

3 THE COURT: So you filed your motion to dismiss  
4 some time ago.

5 MS. BRIER: Yes, Your Honor. In April.

6 THE COURT: Did you file anything further?  
7 Because you're now arguing what the effect of the  
8 confirmation of the plan and his failure to opt out has  
9 been. Is that set forth in any -- I didn't see it. I  
10 looked through the docket again this morning and I --

11 MS. BRIER: Your Honor, we have it.

12 THE COURT: Let me finish my statement. I'm  
13 trying to understand -- this -- I'm not saying it's  
14 incorrect or that you shouldn't be making your argument, but  
15 effectively, it's a new argument that wasn't made in the  
16 motion to dismiss itself. Would you agree with that?

17 MS. BRIER: Yes, Your Honor. And apologies for  
18 speaking over you. I'm trying to capture the Zoom lag, but  
19 there's a little lag here. We would rest on our papers and  
20 we would note that it should be dismissed for the reasons  
21 stated in our motion.

22 We just wanted to note that since our motion was  
23 filed, as you mentioned, a long time ago, some additional  
24 developments have occurred. We're happy to file on the  
25 docket some additional grounds for dismissal, based on what

1 I just raised. But because there was no response, there has  
2 been no responsive pleading in this case, we have not filed  
3 anything additional at this time.

4 THE COURT: Have you had any communication with  
5 Mr. Shanks?

6 MS. BRIER: Yes, Your Honor.

7 THE COURT: What --

8 MS. BRIER: My understanding is that he was  
9 involved in some of the ongoing discussions with similar  
10 claims, that many of which have since settled, if he has  
11 wanted to advance and proceed with his motion to dismiss  
12 here. We asked him to dismiss his case during those  
13 discussions and he asked that we proceed with this argument.

14 THE COURT: So, please understand, I'm not going  
15 to grant your motion on grounds that haven't been argued.  
16 You may be -- all of each of those -- it may that it's  
17 dismissed on the grounds you did argue. But I'm not going  
18 to dismiss it on grounds that subsequent events indicate  
19 that, you know, he's agreed to dismiss or discharge, or  
20 release certain claims. Mr. Shanks is entitled to -- you  
21 know, if you were going to make new arguments, he was  
22 entitled to know what they are before I had this hearing  
23 today.

24 MS. BRIER: Understood, Your Honor. And we would  
25 rest on the arguments we did make as in our motion, and

1 wanted to state for the record and put on the record what  
2 has happened since, given the passage of time. But  
3 absolutely understand that what is before Your Honor is what  
4 we put in our actual motion to dismiss, and that's what he's  
5 had a chance to look at and respond to it.

6 THE COURT: So, one of the things that your motion  
7 papers as a (indiscernible), Mr. Shanks alleged in Count 4,  
8 deceptive trade practice claims, but doesn't say what State  
9 law. And you have a long footnote that -- I don't have it  
10 open in front of me -- I looked at it this morning again --  
11 which I fundamentally agree with that, you know, if he's  
12 going to argue that some state's law other than New York law  
13 applies, or he's going to argue for application of something  
14 other than forum state law, he has to indicate what law, and  
15 further, he'd have to show that there's some material  
16 difference between New York law and Colorado law, was one of  
17 the states.

18 And your brief, I think, did a good job of noting  
19 that, well, it could be one of these other states, New  
20 Jersey, Colorado and New York, obviously, the forum state.  
21 Just address that briefly. I'm going to rule on the motion  
22 and I'll rule on it not on the grounds you're raising for  
23 the first time today. It may be well taken. But on the  
24 grounds that you asserted in your papers as to which he did  
25 not respond, as a pro se plaintiff.

1 Just briefly, what what's your position with  
2 respect to his failure to indicate what state law he's  
3 seeking to apply?

4 MS. BRIER: Yes, Your Honor. As we stated in the  
5 footnote, where there's no conflict between the  
6 (indiscernible) laws and New York (indiscernible) so we  
7 argued under New York law in our motion.

8 THE COURT: All right. I'm going to take it under  
9 submission. I'm going to -- I'll issue something. Thank you  
10 very much, Ms. Brier. Okay.

11 MS. BRIER: Thank you, Your Honor.

12 THE COURT: Anything else, Mr. Koenig?

13 MR. KOENIG: Your Honor, that takes us to the  
14 conclusion of our agenda. Thank you.

15 CLERK: Judge, Mr. Adler has his hand up.

16 THE COURT: Okay. Mr. Adler?

17 MR. ADLER: Good morning, Your Honor. David  
18 Adler, from McCarter English, on the --

19 THE COURT: Let me just say, Mr. Adler, and for  
20 anybody who raises their hands, because of the setup in the  
21 courtroom, I can't see it until -- now I can see it, now  
22 that you've come on the screen, but my courtroom Deputy,  
23 Deanna Anderson, is very good about making sure I know when  
24 someone has raised their hand. So, go ahead, Mr. Adler.

25 MR. ADLER: I apologize, Your Honor. I'm

1 (indiscernible) and I did not wish to come to court tonight  
2 without the (indiscernible) today. So I had raised my hand  
3 earlier at the beginning of the presentation. And then I  
4 raised my hand during the Shanks motion. And my  
5 recollection is that Shanks' motion basically copied the  
6 complaint that was filed by the ad hoc group of retail  
7 borrowers.

8 I have not seen that on the agenda, but from our  
9 perspective, given everything that we went through in the  
10 confirmation to avoid ruling on certain (indiscernible)  
11 respect to voting, a creditor voted yes or did not vote to  
12 object to the plan, my own view is that the Court should not  
13 delve into the merits of that because it's a lot of time  
14 discussing that.

15 So, you know, I understand the argument that he  
16 did not vote and as such he's deemed to accept and that's an  
17 easy way to deal with the issues that have been raised.

18 THE COURT: Well, that's not -- that has not been  
19 argued in any papers before me. Okay? I'm not going to  
20 rule on -- I'm not going to dismiss his complaint on grounds  
21 that are not set forth in any motion papers before me. I  
22 understand he didn't respond to the initial motion to  
23 dismiss. This has been carried multiple times. I think he  
24 may have appeared at various hearings and spoken briefly.

25 This is still on the docket. It needs to be

1 resolved. I am not going to rule on grounds that are not  
2 properly before the Court. I understand your arguments and  
3 concerns, Mr. Adler. All I can deal with is what's in the  
4 papers on the motion to dismiss.

5 MR. ADLER: Would Your Honor allow us to put in a  
6 short --

7 THE COURT: No. I don't want another piece of  
8 paper relating to this case. Okay.

9 MR. ADLER: Okay. The second point that I wanted  
10 to raise, which was at the beginning of the hearing, is  
11 having looked at the motion papers that were filed this  
12 morning -- and I'm not going to go into the merit, but it  
13 would be very useful if as part of this winddown procedure  
14 that the Debtors wish to (indiscernible) that there be some  
15 type of (indiscernible) put together of what creditors could  
16 actually expect to receive in terms of distribution. And  
17 specifically, I fall back to Page 12 of the disclosure  
18 statement, which had a chart that showed what distributions  
19 were, what the reserves were, what the (indiscernible)  
20 secured creditors were. And (indiscernible) frankly what's  
21 being reserved -- or maybe I missed that part.

22 You know, it would -- the question coming from my  
23 constituency is what am I going to be receiving, what  
24 percentage is in crypto. So that's the only point I wanted  
25 to make, Your Honor. I don't want to go into the merits

1 today, because I heard you loud and clear.

2 THE COURT: You know, the 20,000 foot headlines  
3 are that because the staking in business is not going to be  
4 part of NewCo, they're not going to have to make the same  
5 allocation of crypto to Newco, and consequently, there'll be  
6 greater distribution -- assuming this works -- there's  
7 greater distributions more immediately to creditors. That  
8 was sort of the 20,000 foot statement that I read. Whether  
9 it works, I don't know. We'll see. That's not today's  
10 issue, Mr. Adler.

11 I'm not -- it's not my intention to be a roadblock  
12 to the completion of this case and, hopefully, the prompt  
13 distributions to creditors for their recovery. But I've got  
14 to be satisfied that the law permits me to do that. Okay?

15 You know, again, from the 20,000 foot level, this  
16 is not the deal that the creditors voted on. Maybe, you  
17 know, I'll be persuaded it is and this was an option. This  
18 didn't seem to need to be one of the, you know, either the  
19 preferred plane or the fault of the orderly winddown  
20 precisely. We'll see.

21 I'm not making any rulings about it. My comments  
22 are not intended to suggest what the outcome will be. I  
23 think, like in all of the things in this case, that the  
24 views of the creditors are very important to me throughout.  
25 Okay? And it may well be that this is a (indiscernible)

1 they're proposing the Debtor, with the Committee's support,  
2 I gather, is proposing a modification to the plan, that does  
3 not have a material adverse effect on creditors.

4 I've only had -- I've dealt with modifications to  
5 plans a couple of times where the resolicitation was  
6 required. And I just -- I'll obviously have to go look at  
7 the law again when it's briefed. But typically, again from  
8 the high level vantage, it does not have a material -- if no  
9 one's adversely affected by the change, ordinarily it isn't  
10 necessary to have a resolicitation and re-vote.

11 But obviously, this area of the law is more  
12 complicated. Yes, I've approved modifications of plans  
13 before without requiring a new disclosure statement,  
14 resolicitation and voting. It's an expensive process, time  
15 consuming process. It may well be that the showing will be  
16 that no one is materially adversely affected by it. The  
17 plan obviously had toggle provisions in it. So it wasn't --  
18 you know, it was either Plan A or nothing. And so we'll  
19 see. But it's not today's issue. Okay? All right.

20 MR. KOENIG: Your Honor, just really briefly.  
21 What I'll say to Mr. Adler is we filed a declaration of  
22 Robert Compagna and there's exhibits that are attached to  
23 that that includes some more details about the distribution.  
24 I think it's 51 percent in liquid cryptocurrency and the  
25 total headline number is actually 74 percent; 74 percent



1 recovery in part due to the run-up of crypto prices since.  
2 So we would argue -- obviously it's not for today -- that  
3 the recovery is better than it was under the prior plan.

4 MR. ADLER: Thank you.

5 THE COURT: I don't want -- not today, Mr.  
6 (indiscernible). That wasn't an invitation, but that was  
7 just a comment that's obvious to me that you and your client  
8 are going to be heard loud and clear. Okay?

9 MR. KOENIG: Thank you, Your Honor.

10 MR. ADLER: And Your Honor, my only point is that  
11 --

12 THE COURT: Mr. Adler. Mr. Adler, it's enough,  
13 enough for today. Okay?

14 MR. ADLER: Thank you, Your Honor.

15 THE COURT: All right. Thank you. Feel better,  
16 Mr. Adler.

17 MR. ADLER: Thank you.

18 THE COURT: All right. Does anybody else wish to  
19 be heard today?

20 We are adjourned. Thank you very much.

21 (Whereupon these proceedings were concluded at  
22 10:58 AM)

23

24

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: December 4, 2023